IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY , THE 9TH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 194 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 08/12/2003 in WP NO : 25441 OF 2003 on the file of the High Court.)

Between:

Komarapu Chiranjeevulu, S/o. K. Bayyanna, R/o. Hamsa

Village, Kudumu Post, Via Nivagam, Srikakulam-532 457.

..... APPELLANT

AND

1. Eastern Power Distribution Company of Andhra Pradesh

Limited, Sai Shakti, Opp. Sarswati Park, Daba Gardens,
Visakhapatnam - 530 020., rep. by its Chairman &

Managing Director.

2 The Assistant Divisional Engineer, Electrical, Operation,

Eastern Power Distribution Company of Andhra Pradesh

Limited, Amadalavalasa, Srikakulam District.

3 The Superintending Engineer, Assessments Circle, Eastern

Power Distribution Company of Andhra Pradesh Limited,
Opposite Green Park Hotel, Visakhapatnam.

.....RESPONDENT(S)

For the Appellant: Mr. KATRAGADDA GOPAL CHOUDARY, Advocate

For the Respondents : Mr. N. Subba Reddy, Advocate.

The Court made the following JUDGMENT: (per Sri B. Sudershan Reddy, J)

The unsuccessful writ petitioner preferred this writ appeal against the order of dismissal of W.P No. 25441 of 2003 filed by him, passed by a learned single Judge of this Court. The learned single Judge dismissed the writ petition filed by the appellant herein assailing the provisional assessment notice

dated 10.10.2003 issued by the 2nd respondent – Assistant Divisional Engineer, Electrical, Operation.

The appellant is the proprietor of a rice mill by name Sri Rama Modern Rice and Oil Mill located at Balada (Village), Kotturu (Mandal), Srikakulam District. The appellant having applied for sanction of power got electricity service connection No. 307 under LT – III (Industrial) category from the 1st respondent. The industry was inspected by the Assistant Divisional Engineer, Amadalavasala on 2.10.2003 and he noticed the following irregularities:

> "At the time of inspection, the 2 Nos. seals "with impression APSEB MRT-S 5015-APSEB AE-LT 5015 bearing seal bit Nos. E96510, E96511" of CT chamber were found tampered and one

side MRT seal "with impression APSEB MRT-S 5015-APSEB AE-LT 5015 bearing seal bit Nos. E96512" of meter box was found tampered. There are scratches and cutting pliers' impression on the three tampered seal bits. The voltage reading of R, Y, B phases in the meter are 85.8V, 63, 2V, 264.7V respectively. But the input voltages at the cable are 238V, 288V, 266V respectively in R, Y, B phases which are satisfactory. After opening the CT chamber, it is found that the potential connections of R, Y phase's cables were not proper. The meter referred to MRT spot testing. As per MRT test report on 7.10.2003.

a. After opening the CT chamber, it is found that the insulating tapes of R, Y phase's cables were completely removed.

b. The potential connections to the cables of R, Y phases are very loose and just contact to cables.

c. The voltage readings of R, Y phases in the meter are fluctuating because the respective potential connections are loosely connected to the end of binding wires.

d. Due to medding with meter connections in CT chamber, there is – 64.6% errors in the meter".

The 2nd respondent disconnected power supply and issued the impugned notice dated 10.10.2003 estimating the value of energy pilfered by the appellant at Rs.6,60,810/- and accordingly put the appellant on notice that if he is desirous of obtaining restoration of supply, he may pay a sum of Rs.3,30,405/- out of the estimated amount plus supervision charges plus reconnection charges and also bills pending till date. The 2nd respondent immediately on noticing the said irregularities disconnected supply of power.

The appellant filed the writ petition challenging the impugned notice *inter alia* contending that the respondents have not followed the provisions of the Electricity Act, 2003 (for short 'the Act') and hence the order is illegal. The learned Judge dismissed the writ petition upholding the impugned provisional assessment order. Hence this writ appeal.

Sri Gopal Chowdary, learned counsel for the appellant mainly contended that the whole of the procedure adopted by the 2nd respondent is contrary to Section 126 of the Act, which specifically provides the procedure for the provisional assessment

by an assessing officer. Respondents 2 and 3 are not assessing officers as contemplated by the Act. There is no provision in the Act enabling the inspecting authorities to disconnect electricity supply pending final assessment.

Sri N. Subba Reddy, learned senior counsel appearing on behalf of the respondents submitted that the terms and conditions of supply of electrical energy framed vide B.P Ms.No. 690
dated 17.9.1975 by the erstwhile Andhra Pradesh State Electricity Board shall continue to be in operation by virtue of provisions of Section 24 of the General Clauses Act (Central) unless they are shown to be inconsistent with the new enactment. The board proceedings and the notifications framed under Section 49 of Electricity (Supply) Act, 1948 (Act 54 of 1948) shall continue to be in operation.

The Electricity Act, 2003 came into operation with effect from 10.6.2003. It was enacted by the Parliament with the objection of not only consolidating the laws relating to generation, transmission, distribution, trading and use of electricity, but also, in general, for taking measures conducive to the development of electricity industry including promoting competition, protecting the interests of the consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring efficient and environmentally benign policies. Part – XIV of the Act deals with offences and penalties. Section 135 of the Act says that whoever dishonestly taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or tampers a meter, installs or uses a tampered meter, current reversing transformer etc. or damages or destroys an electric meter, apparatus, equipment or wire or causes or allows any of them to be so damaged or destroyed so as to interfere with the proper or accurate metering of electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Special Courts are required to be constituted by the State Government under Section 153 of the Act for the purposes of providing speedy trial of offences referred to in Sections 135 to 139 of the Act. Section 154 prescribes the procedure and the power of the Special Court.

Section 126 of the Act deals with assessment of the value of the pilfered energy and procedure thereof. It would be appropriate to read Section 126 in its entirety:

“126. **Assessment**:-- (1) If on an inspection of any place or

premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

3. The person, on whom a notice has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

4. Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

Provided that in case the person deposits the assessed amount he shall not be subjected to any further liability or any action by any authority whatsoever.

5. If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

6. The assessment under this Section shall be made at a rate equal to one-and-half times the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation:-- For the purposes of this section, --

a. “assessing officer” means an officer of a State Government or Board of licensee, as the case may be, designated as such by the State Government;

b. “unauthorized use of electricity” means the usage of electricity_

i. by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv)for the purpose other than for which the usage of electricity was authorized".

It was argued that it is only such a duly assessing officer who is authorized to make an inspection and come to a conclusion that any person is indulging in unauthorized use of electricity and he alone is entitled to provisionally assess to the best of his judgment, the electricity charges payable. The 2nd respondent is not an assessing officer within the meaning of provisions of Section126 of the Act. Explanation to Section 126 declares that assessing officer means an officer of a State Government or Board or licensee as the case may be, designated as such by the State Government. The Government of Andhra Pradesh vide G.O Ms. No. 144 dated 13.12.2003 designated the Assistant Divisional Officer, in charge of Operation for the purposes of exercising the powers of investigation and enforcement under Section 126 of the Act. The Superintending Engineer/Assessments is made as an authority to make final assessment. Therefore, the contention that respondents 2 and 3 have no authority whatsoever in law to interfere and exercise power under Section 126 of the Act prima facie appears to be untenable.

At any rate, the 3rd respondent issued notice dated 3.11.2003 under Section 49 of the Electricity Supply Act and Clause 39(9) of the Terms and Conditions of Supply of the A.P.S.E. Board requiring the appellant to submit his objections to the conclusions and estimate made by him to which the appellant is entitled to submit his objections. It is not stated in the affidavit filed in support of the writ petition as to whether the appellant submitted his explanation to the said notice. In the circumstances, we are not inclined to go into various objections raised by the appellant with regard to the methodology adopted by respondent Nos. 2 and 3 in estimating the value of the alleged pilferage of power by the appellant.

In the facts and circumstances of the case, we are not inclined to examine various contentions raised by the appellant for the simple reason that it shall always be open to the appellant herein to raise those contentions including jurisdictional questions and invite a decision thereon. The Supreme Court in COLLECTOR v. P. MANGAMMA held that “it is a settled proposition of law that even jurisdictional questions can be considered by an authority deciding the question whether a proceeding was validly initiated or not”. In the instant case, the relevant aspects including the objections raised by the appellant herein as against the impugned provisional assessment order are yet to be considered by the assessing officer. In the circumstances, we are not inclined to go into the merits and express our opinion. It shall be open to the appellant to raise all his objections for which purposes a detailed enquiry may be held by the authority concerned for the purposes of taking an appropriate decision in the matter. That until the disposal of the matter, the appellant shall be entitled for the benefit of the interim order passed by this Court and there shall be no disconnection of supply of power.

That so far as the contention that there can be no disconnection of electricity supply pending provisional assessment or pending final assessment is concerned, the learned single Judge had taken the view that the respondents have acted under the terms and conditions of supply under which they admitted that they had the power to effect disconnection on noticing pilferage of energy. At any rate, we are not impressed by the submission made by the learned counsel for the appellant that in the absence of any specific power conferred under Section 126 of the Act, the Assessing Officer even after coming to the conclusion on inspection of the premises that a person was indulging in unauthorized use of electricity cannot order disconnection of power supply but can only provisionally assess to the best of his judgment the electricity charges payable by such person benefited by the illegal use of energy. That according to the learned counsel for the appellant, under sub-section (6) of Section 127 of the Act whenever a person makes default in making payment of assessed amount, he may be liable to pay an amount of interest at the rate of 16% per annum compounded every six months on the expiry of 30 days from the date of assessment. But under no circumstances power can be disconnected. In our considered opinion, the assessing officer if on inspection found that a person is indulging in unauthorized use of electricity, cannot be a silent spectator and permit such unauthorized use of electricity until the final

assessment is made. That Section 56 of the Act provides for disconnection of power supply in default of payment. It provides that notwithstanding the right to recover the charges or other sums, the licensee of the generating company may after giving not less than 15 days clear notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, can cut off the supply of electricity and for that purpose can cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue supply until such charge or other sum, together with any other expenses incurred by him are paid. It is true that even Section 56 of the Act which enables disconnection of supply in default of payment requires a prior notice for disconnection. That Section 126 does not provide or enable the assessing officer to disconnect supply of power immediately. Even sub-section (4) of Section 126 enables and provides an option to a person served with the order of provisional assessment either to accept such assessment and deposit the assessed amount within seven days of service of such provisional assessment order or prefer objections against the provisional assessment as provided for under sub-section (3) of Section 126 of the Act.

That at any rate we do not propose to examine the question in detail for the reason that power had already been restored to the appellant's industry under the directions of this Court and he will be entitled for the benefit of the directions issued by this Court until the final assessment is made by the 3rd respondent.

The 3rd respondent is directed to go into all the objections to be raised by the appellant herein to the notice dated 3.11.2003 and record findings thereon. The 3rd respondent shall receive the objections of the petitioner to be preferred within 30 days from today, if such objections are not preferred so far.

The Writ Appeal is accordingly disposed of. No order as to costs.

(B. Sudershan Reddy, J)

..07..2004

(Ghulam Mohammed, J)

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One fair copy to the Hon,ble Mr. Justice B. Sudershan Reddy

(for his lordships kind perusal)

DEPUTY REGISTRARY

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SECTION OFFICER

To

1 Chairman & Managing Director, Eastern Power Distribution

Company of Andhra Pradesh Limited, Sai Shakti, Opp.

SarswatiPark, Daba Gardens,Visakhapatnam - 530 020.

2 The Assistant Divisional Engineer, Electrical Operation,

Eastern Power Distribution Company of Andhra Pradesh

Limited, Amadalavalasa, Srikakulam District.

3 The Superintending Engineer, Assessments Circle, Eastern

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